

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JUDY BACKHOUSE, et al.,

## Plaintiffs,

V.

ANDREW WEISS, et al.,

## Defendants.

CASE NO. 5:17-CV-00357-DSF (SK)

## **ORDER DISMISSING ACTION**

ANDREW WEISS, et al.,

## Defendants.

18 Plaintiffs are two *pro se* state-court litigants who lost a breach of  
19 contract action in San Bernardino County Superior Court. They then filed a  
20 federal complaint here under 42 U.S.C. § 1983, alleging that the two private  
21 attorneys who represented the defendants in the state court action (the  
22 “Attorney-Defendants”) and four state court judges who presided as trial and  
23 appellate judges over the action (the “Judicial-Defendants”) denied them  
24 due process and equal protection. (Complaint (“Compl.”), ECF No. 1).  
25 Plaintiffs assert that Attorney-Defendants and Judicial-Defendants  
26 committed fraud during the state court litigation, which led to an  
27 unfavorable judgment that was then improperly affirmed on appeal.  
28 (Compl. at 3-10, 12-15). Plaintiffs request that this Court void the state

1 court judgment, restart the state court action, grant their motion for default  
 2 judgment, and award compensatory damages. (Compl. at 20-21).  
 3 Defendants have moved to dismiss the Complaint on several grounds,  
 4 including lack of state action by the Attorney-Defendants and judicial  
 5 immunity for the Judicial-Defendants. (ECF Nos. 13, 14). Because Plaintiffs  
 6 cannot state a claim upon which relief may be granted under § 1983,  
 7 Defendants' motions to dismiss are granted and Plaintiffs' complaint is  
 8 ordered dismissed without leave to amend.

9 To begin with, Plaintiffs cannot state a claim against the Attorney-  
 10 Defendants. To state a claim under § 1983, the plaintiff must allege that a  
 11 civil rights violation was committed by a person "acting under color of state  
 12 law." *West v. Atkins*, 487 U.S. 42, 48 (1988). Private attorneys in a breach  
 13 of contract lawsuit do not act under color of state law. *See id.* at 50. For  
 14 purposes of § 1983 liability, therefore, it does not matter what misconduct  
 15 Plaintiffs allege the Attorney-Defendants committed in defending their  
 16 clients. *See Briley v. State of Cal.*, 564 F.2d 849, 855 (9th Cir. 1977) ("We  
 17 have repeatedly held that a privately-retained attorney does not act under  
 18 color of state law for purposes of actions brought under the Civil Rights  
 19 Act."). It is possible Plaintiffs may have other recourse for any alleged  
 20 attorney misconduct, but § 1983 is not an available remedy.

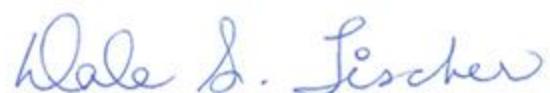
21 Nor can Plaintiffs state a claim against the Judicial-Defendants.  
 22 Judges are immune from suit under § 1983 for actions taken in their judicial  
 23 capacity, even when those actions are alleged to be malicious or corrupt. *See*  
 24 *Pierson v. Ray*, 386 U.S. 547, 554 (1967). However Plaintiffs may try to  
 25 characterize the Judicial-Defendants' orders, actions, and decisions that did  
 26 not go their way, they remain quintessential judicial functions entitled to  
 27 absolute immunity under § 1983. *See Mireles v. Waco*, 502 U.S. 9, 12  
 28 (1991). There is no merit to Plaintiffs' argument that the Judicial-

1 Defendants lacked jurisdiction because their case was purportedly  
2 misclassified as a limited civil case. (ECF No. 24 at 12-13; ECF No. 26 at 7-  
3 9). Designation as a limited civil case only means that “the court has no  
4 authority (i.e., jurisdiction) to award a judgment in excess of \$25,000.”  
5 *Ytuarre v. Superior Court*, 129 Cal. App. 4th 266, 275 (2005). It does not  
6 mean the state court lacked jurisdiction over the subject matter and the  
7 parties in the lawsuit. *See Avery v. Cty. of Santa Clara*, No. 11-CV-04456-  
8 LHK, 2012 WL 5522554, at \*9 (N.D. Cal. Nov. 13, 2012) (“a Superior Court  
9 that enters judgment in a limited civil case that could or should have been  
10 reclassified as an unlimited civil case does not lack fundamental  
11 jurisdiction.”). Equally meritless is Plaintiffs’ argument that allegedly  
12 inaccurate proofs of service attached to certain motions filed by the state-  
13 court defendants divested the trial court of jurisdiction. (ECF No. 24 at 12-  
14 13; ECF No. 26 at 7-9). Such defects in proof of service after all the parties  
15 have appeared and begun litigating a case are “not jurisdictional.” *Lum v.*  
16 *Mission Inn Found., Inc.*, 180 Cal. App. 3d 967, 971 (1986).

17 IT IS THEREFORE ORDERED that Defendants’ motions to dismiss  
18 the Complaint are GRANTED and the Complaint is ordered DISMISSED.  
19 Leave to amend is DENIED because Plaintiffs cannot allege facts that could  
20 cure the legal deficiencies in their Complaint. Judgment dismissing this  
21 action with prejudice shall be entered accordingly.

22 **IT IS SO ORDERED.**

23 DATED: 10/13/17



24  
25 DALE S. FISCHER  
U.S. DISTRICT JUDGE

26 PRESENTED BY:



27 STEVE KIM  
28 U.S. MAGISTRATE JUDGE